

Memorandum



Subject
Consultation with Public Integrity

Date
October 2, 1997

To
Lee J. Radek
Chief
Public Integrity Section
Criminal Division

From
Dawn Johnsen *DJ*
Acting Assistant Attorney
General
Office of Legal Counsel

We have received a copy of the memorandum of today's date from you to Mark Richard on the subject "Position of the Office of Legal Counsel on Legal Issue. Relevant to the Independent Counsel Matter Involving Vice President Gore." As I have already expressed to you, we have several serious concerns about this memorandum, which I will briefly describe below.

First, OLC lawyers participated in the meeting in order to provide background information and ideas that might be helpful to your office in its work. We expressly noted that we had taken no positions with respect to any of the issues that might be discussed at the meeting. Despite the disclaimer in the memo's second paragraph, both the title of the memo and the subsequent discussion (and, indeed, the existence of the memo itself) suggest that OLC stated some positions to which your office needed to respond in writing. Such a suggestion is inconsistent with both OLC's intention and the comments actually communicated in the meeting. We made clear at the beginning of the meeting that it was to be a brainstorming session in which we could discuss issues freely without taking any positions, formal or informal. Your memo unfortunately leaves a different, and incorrect, impression.

Second, to the extent that the memorandum attempts to report remarks made by OLC lawyers at the meeting, it does so incorrectly and incompletely. Thus, not only did the memorandum leave the mistaken impression that "OLC positions" were expressed, it also mischaracterized the comments that individual lawyers offered in during the meeting. Given the freewheeling and unstructured exchange of ideas that took place, it is not surprising that many comments were inaccurately reported, and we certainly do not mean to suggest that the inaccuracies were in any way intentional, but it further underscores the inappropriateness of the memorandum given the nature of the meeting it tries to describe.

Finally, on a positive note, we are more than willing to continue a dialogue with you and your lawyers on these complicated issues. We think that constructive cooperation is essential in a

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case like this one. We trust, however, that our participation will not again be characterized as it was in today's memo.

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